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## **A mechanics' lien encourages the free exchange of value in the real estate development market**

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A mechanics' lien is a statutory security interest in real estate held by a creditor of the owner of the real estate who, at the request or with the consent of the owner of the property, enhances its value by furnishing materials or performing labor for the improvement of the property, and is thus deemed to have acquired a recordable and enforceable interest in the property to the extent of the value of such materials and labor.<sup>1</sup> This security interest applies generally to every case where labor is performed or material furnished for the permanent improvement of real property, as the legislature intended broadly and comprehensively to bring all types of work and materials, no matter by what name they may be called or by what description they may be designated, within the liberal and beneficent of the mechanics' line statute.<sup>2</sup>

A notice of a mechanics' lien may be filed by a worksite contractor, sub-contractor, or supplier in the office of the clerk of the county wherein the real estate subject to the lien is located at any time during the progress of the work or within eight months after the completion of the contract or the final performance of the work for most projects, but it must be filed within four months after the completion of any work on single-family residences.<sup>3</sup> A duly-filed lien on a private improvement is effective for a period of one year from the date of recording, and may be extended for an additional year by recording a notice of extension within the first year.<sup>4</sup>

A mechanics' lien is enforced by way of foreclosing the rights of the owner to redeem the property from the lien in an action brought before either the supreme court or the county court with jurisdiction over the property, and a notice of the pendency of the lien foreclosure action must be filed with the county clerk to preserve the lien during the course of any litigation. The litigation, if successful, will ultimately result in a judgment enabling the lien creditor to actually sell at auction the property subject to the lien to exact the payment of the debt incurred for the labor and/or materials so provided to improve the real estate.

The economic underpinning for the modern statutory mechanics' lien scheme stems from a policy on the one hand favoring and promoting the development of real estate, but on the other hand protecting those who contribute to the market capitalization by contributing labor and materials for such development. Suppliers and contractors who advance to the developers the costs of the labor and materials essential to development of real estate, in expectation of a higher return on their advances when the property is improved and then resold or refinanced, have been given legal security for their investments in the property by way of the statutory liens. Were suppliers and contractors to sell materials or labor for "up front" cash only, the ability of developers to leverage improvement projects against the value of the final project value would be impaired and the labor and supply contracts would go to the lowest, and often not the highest quality, bidders. By providing an automatic security interest for payment to contractors and material men, the statutory mechanics'

lien encourages the free exchange of value in the real estate development market.

Footnotes:

1Schaghticoke Powder Co. v. Greenwich & Johnsonville Rwy. Co., 183 N.Y. 306, 310 (1905).

2Id. at 310 - 311.

3N.Y. Lien Law Â§10(1).

4N.Y. Lien Law Â§17.

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